

**AMENDMENT OFFERED BY MR. STUPAK**  
**TO THE MEDICARE RECONCILIATION PROVISIONS**

At the end of subtitle D of title IV, add the following:

1   **SEC. 4312. EXTENSION OF SUBPOENA AND INJUNCTION AU-**  
2                           **THORITY.**

3       (a) **SUBPOENA AUTHORITY.**—Section 1128A(j)(1)  
4   (42 U.S.C. 1320a-7a(j)(1)) is amended by inserting “and  
5   section 1128” after “with respect to this section”.

6       (b) **INJUNCTION AUTHORITY.**—Section 1128A(k) (42  
7   U.S.C. 1320a-7a(k)) is amended by inserting “or an ex-  
8   clusion under section 1128,” after “subject to a civil mon-  
9   etary penalty under this section,”.

10      (c) **CLARIFYING AMENDMENTS.**—Section 1128A(j)  
11   (42 U.S.C. 1320a-7a(j)) is amended—

12                   (1) in paragraph (1)—

13                   (A) by inserting “, except that, in so ap-  
14                   plying such sections, any reference therein to  
15                   the Commissioner of Social Security or the So-  
16                   cial Security Administration shall be considered  
17                   a reference to the Secretary or the Department  
18                   of Health and Human Services, respectively”  
19                   after “with respect to title II”; and

20                   (B) by striking the second sentence; and

21                   (2) in paragraph (2), to read as follows:

1           “(2) The Secretary may delegate to the Inspec-  
2       tor General of the Department of Health and  
3       Human Services any or all authority granted under  
4       this section or under section 1128.”.

5       (d) CONFORMING AMENDMENT.—Section 1128 (42  
6       U.S.C. 1320a-7) is amended by adding at the end the fol-  
7       lowing new subsection:

8       “(j) REFERENCE TO LAWS DIRECTLY AFFECTING  
9       THIS SECTION.—For provisions of law concerning the  
10      Secretary’s subpoena and injunction authority under this  
11      section, see section 1128A(j) and (k).”.

12   **SEC. 4313. KICKBACK PENALTIES FOR KNOWING VIOLA-**  
13                           **TIONS.**

14       Section 1128B(b) (42 U.S.C. 1320a-7b(b)) is  
15      amended by striking “and willfully” each place it occurs.

16   **SEC. 4314. ELIMINATION OF EXCEPTION OF FEDERAL EM-**  
17                           **PLOYEES HEALTH BENEFITS PROGRAM**  
18                           **FROM DEFINITION OF FEDERAL HEALTH**  
19                           **CARE PROGRAM.**

20       Section 1128B(f)(1) (42 U.S.C. 1320a-7b(f)(1)) is  
21      amended by striking “(other than the health insurance  
22      program under chapter 89 of title 5, United States  
23      Code)”.

1 SEC. 4315. LIABILITY OF PHYSICIANS IN SPECIALTY HOS-  
2 PITALS.

3 Section 1867(d)(1)(B) (42 U.S.C. 1395dd(d)(1)(B))  
4 is amended—

5 (1) by inserting “or a physician working at or  
6 on-call at a hospital that is subject to the require-  
7 ments of subsection (g),” after “physician on-call for  
8 the care of such an individual,”;

9 (2) by striking “or” at the end of clause (i);  
10 and

11 (3) by adding after clause (ii) the following new  
12 clauses:

13 “(iii) fails or refuses to appear within  
14 a reasonable time at a hospital subject to  
15 the requirements of subsection (g) in order  
16 to provide an appropriate medical screen-  
17 ing examination as required by subsection  
18 (a), or necessary stabilizing treatment as  
19 required by subsection (b), or

20 “(iv) fails or refuses to accept an ap-  
21 propriate transfer of a patient to a hospital  
22 that has specialized capabilities or facilities  
23 as defined in subsection (g),”.

1   **SEC. 4316. EXPANSION OF CRIMINAL PENALTIES FOR KICK-**  
2                   **BACKS.**

3       (a) APPLICATION OF CRIMINAL PENALTY AUTHOR-  
4   ITY TO ALL HEALTH CARE BENEFIT PROGRAMS.—Sec-  
5   tion 1128B(b) (42 U.S.C. 1320a-7b(b)) is amended by  
6   striking “Federal health care program” each place it ap-  
7   pears and inserting “health care benefit program”.

8       (b) ATTORNEY GENERAL’S AUTHORITY TO SEEK  
9   CIVIL PENALTIES.—Section 1128B (42 U.S.C. 1320a-7b)  
10  is further amended by adding at the end the following new  
11  subsection:

12       “(g)(1) The Attorney General may bring an action  
13  in the district courts to impose upon any person who car-  
14  ries out any activity in violation of this section with re-  
15  spect to a Federal health care program a civil penalty of  
16  \$25,000 to \$50,000 for each such violation, and damages  
17  of three times the total remuneration offered, paid, solici-  
18  ted, or received.

19       “(2) A violation exists under paragraph (1) if  
20   one or more purposes of the remuneration is unlaw-  
21   ful, and the damages shall be the full amount of  
22   such remuneration.

23       “(3) The procedures for actions under para-  
24   graph (1) with regard to subpoenas, statute of limi-  
25   tations, standard of proof, and collateral estoppel  
26   shall be governed by 31 U.S.C. 3731, and the Fed-

1       eral Rules of Civil Procedure shall apply to actions  
2       brought under this section.

3               “(4) This provision does not affect the availabil-  
4       ity of other criminal and civil remedies for such vio-  
5       lations.”.

6       (c) ATTORNEY GENERAL’S INJUNCTION AUTHOR-  
7       ITY.—Section 1128B (42 U.S.C. 1320a–7b) is further  
8       amended by adding at the end the following new sub-  
9       section:

10       “(h) If the Attorney General has reason to believe  
11       that a person is engaging in conduct constituting an of-  
12       fense under subsection (b) or (g), the Attorney General  
13       may petition an appropriate United States district court  
14       for an order prohibiting that person from engaging in such  
15       conduct. The court may issue an order prohibiting that  
16       person from engaging in such conduct if the court finds  
17       that the conduct constitutes such an offense. The filing  
18       of a petition under this section does not preclude any other  
19       remedy which is available by law to the United States or  
20       any other person.”.

21       (d) DEFINITION.—Section 1128B(f) (42 U.S.C.  
22       1320a–7b(f)) is amended—

23               (1) by redesignating paragraphs (1) and (2) as  
24       subparagraphs (A) and (B);

25               (2) by striking “(f)” and inserting “(f)(1)”; and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(2) For purposes of this section, the term  
4 “health care benefit program” has the meaning  
5 given such term in 18 U.S.C. 24(b).”.

6 (e) CONFORMING AMENDMENTS.—

7           (1) Section 1128A(a) (42 U.S.C. 1320a-7a(a))  
8 is amended in the final sentence by striking  
9 “1128B(f)(1)” and inserting “1128B(f)(1)(A)”; and  
10           (2) Section 24(a) of title 18 of the United  
11 States Code is amended—

12                   (A) by striking the period at the end of  
13 paragraph (2) and adding a semicolon; and

14                   (B) by adding after paragraph (2) the fol-  
15 lowing new paragraph:

16           “(3) section 1128B of the Social Security Act.”.

17 **SEC. 4317. REPEAL OF HIPAA ADVISORY OPINION AUTHOR-**  
18 **ITY.**

19           Section 1128D (42 U.S.C. 1320a-7d) is amended by  
20 striking subsection (b).

1   **SEC. 4318. REPEAL EXPANDED EXCEPTION FOR RISK-SHAR-**  
2                   **ING CONTRACT TO ANTI-KICKBACK PROVI-**  
3                   **SIONS.**

4       Section 1128B(b)(3) (42 U.S.C. 1320a-7b(b)(3)), as  
5   amended by section 216(a) of the Health Insurance Port-  
6   ability and Accountability Act of 1996, is amended—

7           (1) by adding “and” at the end of subpara-  
8       graph (D);

9           (2) by striking “; and” at the end of subpara-  
10      graph (E) and inserting a period; and

11          (3) by striking subparagraph (F).

12   **SEC. 4319. ADMINISTRATIVE FEES FOR MEDICARE OVER-**  
13                   **PAYMENT COLLECTION.**

14       (a) ADMINISTRATIVE FEES FOR PROVIDERS OF  
15   SERVICES OR OTHER PERSONS UNDER PART B.—Section  
16   1833(j) (42 U.S.C. 1395l(j)) is amended by inserting  
17   “(1)” after “(j)” and by adding at the end the following  
18   new paragraph:

19       “(2) If the excess described in paragraph (1) is not  
20   made (or effected by offset) within 30 days of the date  
21   of the determination, an administrative fee of 1 percent  
22   of the outstanding balance of the excess (after application  
23   of paragraph (1)), or such lower amount as an Adminis-  
24   trative Law Judge may determine upon an appeal of the  
25   initial determination of the excess, shall be imposed on the

1 provider, or other person receiving the excess, for deposit  
2 into the Trust Fund under this part.”.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to final determinations made on  
5 or after the date of enactment of this Act.

6 **SEC. 4320. AUTOMATED PREPAYMENT SCREENING RE-**  
7 **QUIREMENT.**

8 (a) DETERMINATION BY ADMINISTRATOR.—By Sep-  
9 tember 1 of each year (beginning with 1998), the Adminis-  
10 trator of the Health Care Financing Administration, after  
11 consultation with the Comptroller General of the United  
12 States, shall determine—

13 (1) the medical diagnoses by providers of serv-  
14 ices under title XVIII of the Social Security Act  
15 which frequently result in overpayments to such pro-  
16 viders under such title; and

17 (2) the percentage of claims involving the diag-  
18 noses described in paragraph (1), that fiscal  
19 intermediaries and carriers under such title shall  
20 screen before payment is made in order to avoid  
21 such overpayments.

22 (b) REQUIREMENT FOR FISCAL INTERMEDIARIES  
23 AND CARRIERS.—The Secretary of Health and Human  
24 Services shall not enter into a contract with a fiscal  
25 intermediary or carrier under title XVIII of the Social Se-



1 curity Act (42 U.S.C. 1395 et seq.) unless the Secretary  
2 finds that such intermediary or carrier will screen the  
3 claims for payment, in accordance with subsection (a),  
4 under such title.

5 (c) NOTICE TO FISCAL INTERMEDIARIES AND CAR-  
6 RIERS.—The Secretary shall cause to have published in  
7 the Federal Register, in the last 15 days of October of  
8 each year, the results of the determination made under  
9 subsection (a).